CANCELLED

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(1) 5

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

Misc. Appeal (C) No. 47 /2007

Appellant
Applicant : Shiv Prasad Kashyap, aged 36 years S/o Matru Ram, R/o Village Paijaniya, Tahsil Lormi, Distt. : Bilaspur (C.G.)

Versus

Respondents
Non-Applicants :

1. Devi Prasad Tiwari, aged 48 years, S/o Bhanu Prasad Tiwari R/o Pandariya, P.S. Pandariya, Distt. : Kabirdham (C.G.)
2. Santosh Kumar Yadav, aged 37 years, S/o Anjori Ram, R/o Village Belgahna, Indira Aawas, P.S. Kota, O.P. Belgahna, Distt. Bilaspur (C.G.)
3. The New India Insurance Co.Ltd., through Branch Manager, Branch Office - Rajendra Nagar Chowk (Presently at Near Bus Stand) Bilaspur (C.G.)
4. Shiv Kumar Sarraf, Link Road, Bilaspur C/o Shekh Ayyub, aged 42 years, S/o Shekh Mannuk, R/o Rajiv Gandhi Chowk, Jarhabhata, Bilaspur (C.G.)
5. United India Insurance Co. Ltd. through Branch Manager, Branch Office Rajendra Nagar Chowk, Bilaspur (C.G.)

P.R. No. 13/1/07
Presented by Shri Ramakrishna Agrawal
dated 10/1/07

Miscellaneous Appeal Under Section 173 of the Motor Vehicle Act 1988

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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

MISC. APPEAL (C) NO. 47/2007

APPELLANT: Shiv Prasad Kashyap

Versus

RESPONDENTS: Devi Prasad Tiwari and others.

Present : Shri Ravindra Agrawal, counsel for the appellant.
None for respondents.

ORAL ORDER

(Passed on 15th February, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act, 1988") for enhancement of the compensation amount preferred by claimant against the award dated 22/08/2006 passed by Ist Additional Motor Accident Claims Tribunal, Bilaspur (henceforth, "the Tribunal") in Claim Case No. 53/2005 whereby he has been awarded a sum of Rs.72,000/-.

2) The factual matrix of the case, in brief, is that on 28/04/2004 at about 2.00 p,m. when appellant -Shiv Prasad was going to his village Paijaniya from Bilaspur on Tanker bearing No. CG 10/ZB/0109 (for short "tanker"), near village Binouri, when driver Harnarayan saw a passenger bus bearing No.CG10 ZA 0552 coming from the opposite direction, turned the tanker to its left side, left front wheel of the tanker struck to culvert's wall, thereafter collided with the passenger bus and turned turtle. Tanker driver Harnarayan and helper Suraj sustained injuries and succumbed to those on the spot. Appellant also sustained injuries. He filed an application under Section 166 of the Act, 1988 for grant of

compensation against driver, owner, insurer of the passenger bus as well against the owner, insurer of the tanker. The claim was opposed by the respondents.

3) Learned Tribunal considered the evidence adduced by the parties, and awarded compensation vide impugned award as below :

a)	Pains and suffering	--	Rs.	30,000/-
b)	Special diet transportation and attendant	--	Rs.	12,000/-
c)	Medical expenses	--	Rs.	25,000/-
d)	Loss of income	--	Rs.	5,000/-
	Total	--	Rs.	72,000/-

4) Learned counsel for the appellant contended that compensation awarded to the claimant is insufficient.

5) Dr.GL Arora (PW/3) in his statement deposed that on 18.01.2005 he examined the claimant and issued disability certificate Annexure P/9. From his evidence and Annexure P/9 it is proved that claimant sustained mild disability of 10%. He was admitted in hospital from 03.05.2004 to 08.05.2004. Claimant Shiv Prasad (PW/1) in his statement has admitted that at the time of accident he was not in service. He stated that he has 3.5 acres of agricultural land but did not say loss of income suffered by him due to his injuries towards agriculture. It is not out of place to mention that no document to support that he was owner of agriculture land has been tendered by him. In view of the evidence on record we can say that mercy played a vital role in the instant case which constrained the Tribunal to grant such a compensation for mild disability of 10% suffered by the claimant that too on a single limb.

(6) We do not find any illegality or perversity in the findings recorded by the Tribunal. Accordingly, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed in limine. No costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Raju